

UNITED STATES OF AMERICA
POSTAL REGULATORY COMMISSION
WASHINGTON, DC 20268-0001

Before Commissioners:

Ruth Y. Goldway, Chairman;
Robert G. Taub, Vice Chairman;
Mark Acton;
Tony Hammond; and
Nanci E. Langley

Competitive Product Prices
Priority Mail
Priority Mail Contract 52

Docket No. MC2013-35

Competitive Product Prices
Priority Mail Contract 52 (MC2013-35)
Negotiated Service Agreement

Docket No. CP2013-46

ORDER ADDING PRIORITY MAIL CONTRACT 52
TO THE COMPETITIVE PRODUCT LIST

(Issued February 4, 2013)

I. INTRODUCTION

The Postal Service seeks to add a new product identified as Priority Mail Contract 52 to the competitive product list.¹ For the reasons discussed below, the Commission approves the Request.

¹ Request of the United States Postal Service to Add Priority Mail Contract 52 to Competitive Product List and Notice of Filing (Under Seal) of Unredacted Governors' Decision, Contract, and Supporting Data, January 23, 2013 (Request).

II. BACKGROUND

On January 23, 2013, in accordance with 39 U.S.C. § 3642 and 39 C.F.R. § 3020.30 *et seq.*, the Postal Service filed the Request, along with supporting documents. In the Request, the Postal Service asserts that Priority Mail Contract 52 is a competitive product that establishes rates “not of general applicability” within the meaning of 39 U.S.C. § 3632(b)(3). *Id.* at 1. The Postal Service further asserts that the prices and classification underlying the contract are supported by Governors’ Decision No. 11-6.² Among the supporting documents, the Postal Service included a copy of Governors’ Decision No. 11-6, a contract related to the proposed new product, requested changes to the competitive product list, a statement supporting the Request, and a certification of compliance with 39 U.S.C. § 3633(a). In addition, the Postal Service submitted an application for non-public treatment of materials to maintain redacted portions of Governors’ Decision No. 11-6, the contract, customer-identifying information, and related financial information filed under seal. Request, Attachment F.³

On January 24, 2013, the Commission issued an order establishing the two dockets, appointing a Public Representative, and providing interested persons with an opportunity to comment.⁴

² Decision of the Governors of the United States Postal Service on the Establishment of Prices and Classifications for Domestic Competitive Agreements, Outbound International Competitive Agreements, Inbound International Competitive Agreements, and Other Non-Published Competitive Rates, March 22, 2011 (Governors’ Decision No. 11-6).

³ In its application for non-public treatment of materials, the Postal Service asks the Commission to protect customer-identifying information from public disclosure indefinitely. *Id.* at 7. The Commission has consistently denied similar requests for indefinite protection. See, e.g., Order No. 563, Docket Nos. MC2011-1 and CP2011-2, Order Approving Express Mail Contract 9 Negotiated Service Agreement, October 20, 2010, at 6-7.

⁴ Order No. 1636, Notice and Order Concerning the Addition of Priority Mail Contract 52 to the Competitive Product List, January 24, 2013.

III. COMMENTS

The Public Representative filed comments on February 1, 2013.⁵ No other interested person submitted comments.

The Public Representative states that he has reviewed the contract and the supporting materials. PR Comments at 1. Based on this review, the Public Representative concludes that the contract complies with the requirements of title 39, United States Code, and appears to make a “substantial contribution” toward institutional costs. *Id.* at 2. He also notes that he believes the annual inflation adjustment under the contract will help the contract cover institutional costs even if costs increase. *Id.*

In addition, the Public Representative expresses a “minor methodological concern” with the manner in which the Postal Service calculated the first year of inflation for the contract. *Id.* at 1. The Public Representative observes that the beginning and ending months for the historical period used to make the calculation are not aligned with the projected period, and asserts that the Postal Service’s methodology may have caused the Postal Service to slightly understate the cost coverage provided by the contract. *Id.* However, he notes that this concern does not prevent the Public Representative from concluding that the contract is “beneficial to the Postal Service, the contract partner, and the general public.” *Id.*

IV. COMMISSION ANALYSIS

The Commission has reviewed the Request, the instant contract, the supporting data filed under seal, and the Public Representative’s comments.

Product list requirements. The Commission’s statutory responsibilities when evaluating the Request include assigning Priority Mail Contract 52 to either the market

⁵ Public Representative Comments, February 1, 2013 (PR Comments). Contemporaneously with his comments, the Public Representative filed a Public Representative Motion to File Late Comments, February 1, 2013 (Motion for Late Comments). The Motion for Late Comments is granted.

dominant or competitive product list. See 39 U.S.C. § 3642(b)(1); 39 C.F.R. § 3020.34. In addition, the Commission must consider the availability and nature of private sector enterprises engaged in delivering the product, the views of those who use the product, and the likely impact on small business concerns. See 39 U.S.C. § 3642(b)(3); 39 C.F.R. § 3020.32(f), (g), and (h).

The Postal Service asserts that it provides Priority Mail service in a highly competitive market, that other shippers who provide similar services constrain its bargaining position, and that it can therefore neither raise prices nor decrease service, quality, or output without risking the loss of business to competitors. Request, Attachment D at 2. The Postal Service states that the contract partner supports the Request, that expedited shipping is widely available from private firms, and that the Postal Service is unaware of any small business concerns that could offer comparable services to the contract partner. *Id.* at 3.

Having considered the relevant statutory and regulatory requirements and the Postal Service's supporting justification, the Commission finds that Priority Mail Contract 52 is appropriately classified as competitive and is added to the competitive product list.

Cost considerations. Because Priority Mail Contract 52 is a competitive product, the Postal Service must also show that the contract covers its attributable costs, contributes to the Postal Service's institutional costs, and does not cause any market dominant products to subsidize competitive products. 39 U.S.C. § 3633(a); 39 C.F.R. § 3015.5.

As part of its Request, the Postal Service submitted a certified statement that the contract complies with the requirements of 39 U.S.C. § 3633(a). Request, Attachment E. In addition, the Postal Service filed supporting revenue and cost data showing that the contract is expected to cover its costs. The Commission acknowledges the Public Representative's concern regarding the Postal Service's calculation of inflation. Despite this concern, the Public Representative concludes that the contract will be beneficial to the Postal Service. Further, even if the minor misalignment of the historical period and the projected period were revised, it likely

would not impair the ability of the contract to comply with 39 U.S.C. § 3633(a). Thus, the Postal Service's inflation adjustments appear to be consistent with the Postal Service's inflation adjustments with respect to other Priority Mail contracts. The Commission does not find any compelling reason for altering such adjustments in this case, and it notes that generally the most recent available data should be used for such adjustments. Consequently, the Commission finds that Priority Mail Contract 52 complies with the provisions applicable to rates for competitive products. As part of its Annual Compliance Determination proceedings, the Commission will review the contract's financial performance for consistency with section 3633(a).

Other considerations. By its terms, the contract becomes effective either on the first business day after the date that the Commission issues all necessary regulatory approvals or on a subsequent date mutually agreed upon by the parties. Request, Attachment B at 3. The contract is scheduled to expire 3 years after the effective date, unless, among other things, either party terminates the contract with 30 days' written notice to the other party. *Id.*

The Postal Service shall promptly notify the Commission of the effective date of the instant contract.

If the instant contract is terminated prior to the scheduled expiration date, the Postal Service shall promptly notify the Commission.

Within 30 days after the instant contract terminates, the Postal Service shall file the annual (contract year) costs, volumes, and revenues disaggregated by weight and zone associated with the contract.

In conclusion, the Commission approves Priority Mail Contract 52 as a new product. The revision to the competitive product list appears below the signature of this Order and is effective immediately.

V. ORDERING PARAGRAPHS

It is ordered:

1. Priority Mail Contract 52 (MC2013-35 and CP2013-46) is added to the competitive product list as a new product under Negotiated Service Agreements, Domestic. The revision to the competitive product list appears below the signature of this Order and is effective immediately.
2. The Postal Service shall promptly notify the Commission of the effective date of the instant contract.
3. The Postal Service shall notify the Commission if the instant contract terminates prior to the scheduled expiration date as discussed in this Order.
4. Within 30 days after the instant contract terminates, the Postal Service shall file the annual (contract year) costs, volumes, and revenues disaggregated by weight and zone associated with the contract.
5. The Secretary shall arrange for publication in the *Federal Register* of an updated product list reflecting the change made in this Order.

By the Commission.

Shoshana M. Grove
Secretary

CHANGE IN MAIL CLASSIFICATION SCHEDULE
CHANGE IN PRODUCT LIST

The following material represents changes to the product list codified in Appendix A to 39 C.F.R. part 3020, subpart A—Mail Classification Schedule. These changes reflect the Commission's order in Docket Nos. MC2013-35 and CP2013-46. The Commission uses two main conventions when making changes to the product list. New text is underlined. Deleted text is struck through.

Part B—Competitive Products

2000 Competitive Product List

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Negotiated Service Agreements

Domestic

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Priority Mail Contract 52

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